designated to address unusual or unforeseen situations as the need arises. Officers of local health departments and medical societies may be consulted to obtain the names of competent surgeons and clinics willing to make the examinations. An understanding shall be reached with respect to the fee which the surgeon or clinic will charge for the examination. The alien shall pay the fee agreed upon directly to the surgeon making the examination.

(c) *Civil surgeon reports*—(1) *Applicants for status of permanent resident.*

(i) When an applicant for status as a permanent resident is found upon examination to be free of any defect, disease, or disability listed in section 212(a) of the Act, the civil surgeon shall endorse Form I–486A, Medical Examination and Immigration Interview, and forward it with the X-ray and other pertinent laboratory reports to the immigration office from which the alien was referred, The immigration office may return the X-ray and laboratory reports to the alien. If the applicant is found to be afflicted with a defect, disease or disability listed under section 212(a) of the Act, the civil surgeon shall complete Form OF–157 in duplicate, and forward it with Form I–486A, X-ray, and other pertinent laboratory reports to the immigration office from which the alien was referred.

(ii) If the applicant is found to be afflicted with active tuberculosis and a waiver is granted under section 212(g) of the Act, the immigration office will forward a copy of the completed Form I–601 (Application for Waiver of Grounds of Excludability) and a copy of the Form OF–157 to the Director, Division of Quarantine, Center for Prevention Sevices, Centers for Disease Control, Atlanta, GA 30333.

(iii) If an alien who if found to be mentally retarded or to have had one or more previous attacks of insanity, applies for a waiver of excludability under section 212(g) of the Act, the immigration office will submit to the Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, the completed Form I–601, including a copy of the medical report specified in the instructions attached to that form, and a copy of Form OF–157. This official shall review the medical report and advise the Service whether it is acceptable, in accordance with §212.7(b)(4)(ii) of this chapter.

(iv) In any other case where the applicant has been found to be afflicted with active or inactive tuberculosis or an infectious or noninfectious leprosy condition, the immigration office will forward a copy of Form OF–157 with the applicant's address endorsed on the reverse to the Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333.

(2) *Other aliens.* The results of the examination of an alien who is not an applicant for status as a permanent resident shall be entered on Form I–141, Medical Certificate, in duplicate. This form shall be returned to the Service office by which the alien was referred.

(d) *U.S. Public Health Service hospital and outpatient clinic reports.* When an applicant for a benefit under the immigration laws, other than an applicant for status as a permanent resident, is examined by a medical officer of the U.S. Public Health Service, the results of the examination shall be entered on Form I–141, Medical Certificate, in duplicate. The form shall be returned to the Service office by which the alien was referred.

[38 FR 33061, Nov. 30, 1973, as amended at 48 FR 30610, July 5, 1983; 52 FR 16194, May 1, 1987]

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

Sec.

AUTHORITY: 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, 1252.

§ 235.1 Scope of examination.

(a) *General.* Application to enter the United States shall be made either in person to an immigration officer at a U.S. port of entry enumerated in part 100 of this chapter at a time when the immigration office at the port is open for inspection or as provided in § 235.13.

(b) *U.S. citizens.* A person claiming U.S. citizenship must establish that fact to the examining immigration officer's satisfaction and must present a U.S. passport if such passport is required under the provisions of 22 CFR part 53. If such an applicant for admission fails to satisfy the examining immigration officer that he is a U.S. citizen, he shall thereafter be inspected as an alien.

(c) *Alien members of United States Armed Forces and members of a force of a NATO country.* Any alien member of the United States Armed Forces who is in the uniform of, or bears documents identifying him/her as a member of, such Armed Forces, and who is coming to or departing from the United States under official orders or permit of such Armed Forces is not subject to the exclusion provisions of the Act. A member of the force of a NATO country signatory to Article III of the Status of Forces Agreement seeking to enter the United States under official orders is exempt from the control provision of the Act. Any alien who is a member of either of the foregoing classes may, upon request, be inspected under the provisions of the Act, and his/her entry as an alien may be recorded. If the alien does not appear to the examining immigration officer to be clearly and beyond a doubt entitled to enter the United States under the provisions of the Act, the alien shall be so informed and his/her entry shall not be recorded.

(d) *Qualifications for aliens.* The following general qualifications and requirements shall be met by each alien seeking to enter the United States for permanent, indefinite, or temporary stay, and regardless of the purpose for which he/she seeks to enter:

(1) He/she shall present whatever documents are required and shall establish to the satisfaction of the immigration officer that he/she is not subject to exclusion under the immigration laws, Executive Orders, or Presidential Proclamations and is entitled under all of the applicable provisions of the immigration laws and this chapter to enter the United States.

(2) For the purpose of this part, any alien coming to a United States port from a foreign port, from an outlying possession of the United States, from Guam, Puerto Rico, or the Virgin Islands of the United States, or from another port of the United States at which examination under this part was not completed, shall be regarded as an arrival.

(3) Any person, including an alien crewman, passing through the Canal Zone on board a vessel which enters and clears at the Canal Zone port only to transit the Zone, to refuel, or to land passengers or crewmen for medical treatment, shall not be regarded as coming from a foreign port solely by reason of such passage.

(4) Any person including an alien crewman, on board a vessel which after arrival at a United States port of entry passes the Great Lakes seaway en route to another United States port and which enters and clears at points in Canada only to transit the seaway, to refuel, or to land passengers or crewmen for medical treatment, shall not be regarded as coming from a foreign port solely by reason of such passage.

(5) Any person seeking to enter the United States, including an alien crewman, on board a vessel en route from one United States port to another United States port shall not be regarded as coming from a foreign port solely by reason of the vessel's stop at Freeport, Bahamas, for bunkering only.

(6) Any person, including an alien crewman on board a vessel en route to the United States solely for bunkering purposes or an aircraft en route to the United States solely for refueling purposes, who does not seek to enter the United States, shall be regarded as not arriving for purposes of immigration.

(7) The immigration inspection of any person, including an alien crewman, on board a vessel or aircraft, may be postponed to an onward port of arrival, if the vessel or aircraft will only bunker or refuel at the first port of call.

(8) Any citizen of Canada or Mexico seeking to enter the United States as a principal alien E–1 or E–2, or as an L–1 or TN, for the purpose of employment at a site where the Secretary of Labor has certified to or otherwise informed the Commissioner that there is a strike or other labor dispute involving a work stoppage of workers in progress, and the temporary entry of that citizen of Canada or Mexico may affect adversely either the settlement of any such labor dispute or the employment of any person who is involved in any such dispute, may be refused entry in the classification sought. The applicant shall be advised in writing of the reason(s) for the refusal. A designated representative of the government of Canada or Mexico shall be promptly notified in writing of the reason(s) for the refusal of entry.

(e) *U.S. citizens, lawful permanent residents of the United States, Canadian nationals, and other residents of Canada having a common nationality with Canadians, entering the United States by small craft.* Upon being inspected by an immigration officer and found eligible for admission as a citizen of the United States, or found eligible for admission as a lawful permanent resident of the United States, or in the case of a Canadian national or other resident of Canada having a common nationality with Canadians being found eligible for admission as a temporary visitor for pleasure, a person who desires to enter the United States from Canada in a small pleasure craft of less than 5 net tons without merchandise may be issued, upon application and payment of a fee prescribed under § 103.7(b)(1) of this chapter, Form I–68, Canadian Border Boat Landing Card, and may thereafter enter the United States along with the immediate shore area of the United States on the body of water designated on the Form I–68 from time to time for the duration of that navigation season without further inspection. In the case of a Canadian national or other resident of Canada having a common nationality with Canadians, the Form I–68 shall be valid only for the purpose of visits not to exceed 72 hours and only if the alien will remain in nearby shopping areas, nearby residential neighborhoods, or other similar areas adjacent to the immediate shore area of the United States. If the bearer of Form I–68 seeks to enter the United States by means other than small craft of less than 5 net tons without merchandise, or if he or she seeks to enter the United States for other purposes, or if he or she is an alien, other than a lawful permanent resident alien of the United States, and intends to proceed beyond an area adjacent to the immediate shore area of the United States, or remains in the United States longer than 72 hours, he or she must apply for admission at a United States port of entry.

(f) *Arrival/Departure Record, Form I–94*—(1) *Nonimmigrants.* Each nonimmigrant alien, except as indicated below, who is admitted to the United States shall be issued a completely executed Form I–94 which must be endorsed to show: Date and place of admission, period of admission, and nonimmigrant classification. A nonimmigrant alien who will be making frequent entries into the United States over its land borders may be issued a Form I–94 which is valid for any number of entries during the validity of the form. A nonimmigrant alien entering the United States at a land border Port-of-Entry who is issued Form I–94 will be charged a fee as prescribed under § 103.7(b)(1) of this chapter. In the case of a nonimmigrant alien admitted with the classification TN (Trade, North American Free Trade Agreement (NAFTA)), the specific occupation of such alien as set forth in Appendix 1603.D.1 of the NAFTA shall be recorded in item number 18 on the reverse side of the arrival portion of Form I–94, and the name of the employer shall be noted on the reverse side of both the arrival and departure portions of Form I–94. The departure portion of Form I–94 shall bear the legend ''multiple entry.'' A Form I–94 is not required by:

(i) Any nonimmigrant alien described in § 212.1(a) of this chapter and 22 CFR 41.129(a) who is admitted as a visitor for business or pleasure or admitted to proceed in direct transit through the United States;

(ii) Any nonimmigrant alien residing in the British Virgin Islands who was

admitted only to the U.S. Virgin Islands as a visitor for business or pleasure under § 212.1(b) of this chapter;

(iii) Any Mexican national in possession of a valid nonresident alien Mexican border crossing card who is admitted as a border crosser or nonimmigrant visitor at a Mexican border port of entry for a period not to exceed 72 hours to visit within 25 miles of the border;

(iv) Any Mexican national in possession of a valid Mexican passport and a multiple-entry nonimmigrant visa issued under section 101(a)(15)(B) of the Act who is admitted at a Mexican border port of entry as a nonimmigrant visitor for a period not to exceed 72 hours to visit within 25 miles of the border; or

(v) Any Mexican national eligible for a Mexican Border Visitors Permit, Form I–444, under paragraph (g) of this section.

(vi) Bearers of Mexican diplomatic or official passports described in § 212.1(c–1) of this chapter.

(2) *Paroled aliens.* Any alien paroled into the United States under section 212(d)(5) of the Act, including any alien crewmember, shall be issued a completely executed Form I–94 which must include:

(i) Date and place of parole;

(ii) Period of parole; and

(iii) Conditions under which the alien is paroled into the United States. A fee shall not be required for Form I–94 when it is issued for the purpose of paroling an alien into the United States.

(g) *Mexican Border Visitors Permit, Form I–444.* (1) Any Mexican national exempt from issuance of a Form I–94 under paragraph (f)(1) (iii) or (iv) of this section shall be issued a Mexican Border Visitor's Permit, Form I–444, whenever:

(i) The period of admission sought is more than 72 hours but not more than 30 days; or

(ii) The applicant desires to travel more than 25 miles from the Mexican border but within the 5-state area of Arizona, California, Nevada, New Mexico, or Texas. A separate Form I–444 will be issued for each applicant for admission and a fee as prescribed under § 103.7(b)(1) of this chapter shall be charged for each applicant, or until the family cap is reached.

(2) If, after entry and issuance of the Form I–444, the alien seeks to remain for longer than 30 days or to proceed outside of the five-state area, the alien must apply for permission at a Service office located within the five-state area.

[32 FR 9627, July 4, 1967, as amended at 32 FR 11628, Aug. 11, 1967; 45 FR 70428, Oct. 24, 1980; 46 FR 43826, Sept. 1, 1981; 47 FR 49953, Nov. 4, 1982; 49 FR 33434, Aug. 23, 1984; 58 FR 69217, Dec. 30, 1993; 60 FR 40068, Aug. 7, 1995; 60 FR 50389, Sept. 29, 1995]

§ 235.2 Examination postponed.

Whenever an alien on arrival is found or believed to be suffering from a disability which renders it impractical to proceed with the examination under the Act, the examination of such alien, members of his family concerning whose admissibility it is necessary to have such alien testify, and any accompanying aliens whose protection or guardianship will be required should such alien be found inadmissible shall be deferred for such time and under such conditions as the district director in whose district the port is located imposes.

[22 FR 9791, Dec. 6, 1957]

§ 235.3 Detention and deferred inspection.

(a) *Prior to inspection.* All persons arriving at a port in the United States by vessel or aircraft shall be detained aboard the vessel or at the airport of arrival by the master, commanding officer, purser, person in charge, agent, owner, or consignee of such vessel or aircraft until admitted or otherwise permitted to land by an officer of the Service. Notice or order to detain shall not be required. The Service will not be liable for any expenses of a passenger who has not been presented for inspection and for whom a determination has not been made concerning admissability by a Service officer.

(b) *Aliens with no documentation or false documentation.* Any alien who appears to the inspecting officer to be inadmissible, and who arrives without documents (except an alien for whom documentary requirements are waived

under §211.1(b)(3) or §212.1 of this chapter) or who arrives with documentation which appears on its face to be false, altered, or to relate to another person, or who arrives at a place other than a designated port of entry, shall be detained in accordance with section 235(b) of the Act. Parole of such aliens shall only be considered in accordance with §212.5(a) of this chapter.

(c) *Aliens with documents.* Any alien who appears to the inspecting officer to be inadmissible, but who does not fall within paragraph (b) of this section, may be detained, paroled, or paroled for deferred inspection by the inspecting officer. In determining whether or not an alien shall be detained, paroled or paroled for deferred inspection, the inspecting officer shall consider the likelihood that the alien will abscond or pose a security risk.

(d) *Service custody.* The Service will assume custody of any alien subject to detention under §235.3 (b) or (c) of this section, except in the case of an alien who is presented as a Transit Without Visa (TWOV) passenger.

(e) *Notice to carriers.* In the opinion of the examining immigration officer, it is not practical to resolve a question of admissability at the time of arrival of an alien passenger on a vessel or aircraft, the officer shall execute a Form I–259C to notify the agent, master, or commanding officer of the vessel or aircraft, if applicable, that the alien passenger may be excludable from the United States and in the event the alien is formally ordered excluded and deported, the carrier will be responsible for detention and transportation expenses to the last foreign port of embarkation as provided in §237.5 of this chapter.

(f) *Detention in Non-Service facility.* Whenever an alien is taken into Service custody and detailed at a facility other than at a Service Processing Center, the public or private entities contracted to perform such service shall have been approved for such use by the Service's Jail Inspection Program or shall be performing such service under contract in compliance with the Standard Statement of Work for Contract Detention Facilities. Both programs are administered by the Detention and Deportation section having jurisdiction over the alien's place of detention. Under no circumstances shall an alien be detained in facilities not meeting the four mandatory criteria for usage. These are: (1) 24-Hour Supervision, (2) Conformance with Safety and Emergency Codes, (3) Food Service and (4) Availability of Emergency Medical Care.

(g) *Privilege of communication.* The mandatory notification requirements of consular and diplomatic officers pursuant to 8 CFR 242.2(g) apply to exclusion proceedings.

[47 FR 30046, July 9, 1982, as amended at 47 FR 46494, Oct. 19, 1982; 54 FR 101, Jan. 4, 1989; 54 FR 6365, Feb. 9, 1989; 60 FR 16043, Mar. 29, 1995]

§235.4 Endorsement of documents.

The admitting immigration officer shall, by means of a stamp, record in each passport required to be presented the word ''Admitted'' and the date and place of admission. The same information shall, upon admission, be recorded on any immigrant visa, reentry permit or required Form I–94. The ''I–94 Departure Record'' part of Form I–94, properly endorsed, shall be returned to the alien for retention while in the United States. At the time of departure from the United States, the alien shall surrender the I–94 Departure Record to a representative of the carrier transporting the alien.

[48 FR 35349, Aug. 4, 1983]

§235.5 Preinspection.

(a) *In United States territories and possessions.* In the case of any aircraft proceeding from Guam, Puerto Rico, or the Virgin Islands of the United States destined directly and without touching at a foreign port or place to any other of such places or to one of the States of the United States or the District of Columbia, the examination required by the act of the passengers and crew may be made prior to the departure of the aircraft, and in such event, final determination of admissibility shall be made immediately prior to such departure. The examination shall be conducted in accordance with sections 234, 235, 236, and 237 of the act and this part and parts 236 and 237 of this chapter,

except that if it appears to the examining immigration officer that any person in the United States being examined under this section is prima facie deportable from the United States, further action with respect to his examination shall be deferred and further proceedings conducted as provided in section 242 of the Act and part 242 of this chapter. When the foregoing inspection procedure is applied to any aircraft, persons examined and found admissible shall be placed aboard the aircraft, or kept at the airport separate and apart from the general public until they are permitted to board the aircraft. No other person shall be permitted to depart on such aircraft until and unless he is found to be admissible as provided in this section.

(b) *In contiguous territory and adjacent islands.* On and after December 24, 1952, in the case of any aircraft or vessel proceeding directly from a port or place in foreign contiguous territory or adjacent islands to a port of entry in the United States, the examination and inspection of passengers and crew required by the Act and final determination of admissibility may be made immediately prior to such departure at the port or place in foreign contiguous territory or adjacent islands and shall have the same effect under the act as though made at the destined port of entry in the United States.

[23 FR 3997, June 7, 1958, as amended at 24 FR 2583, Apr. 3, 1959; 50 FR 11842, Mar. 26, 1985; 54 FR 101, Jan. 4, 1989]

§ 235.6 Referral to immigration judge.

(a) *Notice.* If, in accordance with the provisions of section 235(b) of the Act, the examining immigration officer detains an alien for further inquiry before an immigration judge, he shall immediately sign and deliver to the alien a Notice to Alien Detained for Hearing by an Immigration Judge (Form I–122). If an asylum officer denies an application for asylum or withholding of deportation filed by an alien who is an applicant for admission or has been paroled under §212.5 of this chapter, this Notice may be signed and delivered to the alien by the supervisory asylum officer or by the Assistant Commissioner, Refugees, Asylum and Parole. If the alien is unable to read or understand the notice, it shall be read and explained to him by an employee of the Service, through an interpreter, if necessary, prior to such further inquiry. In addition, the alien shall be advised of his right to representation by counsel of his choice at no expense to the Government, and of the availability of free legal services programs qualified under part 292a of this chapter and organizations recognized pursuant to §292.2 of this chapter, located in the district where the alien is being detained. He shall also be furnished with a list of such programs.

(b) *Certification for mental condition; medical appeal.* An alien certified under paragraph (1), (2), (3), (4), or (5) of section 212(a) of the Act shall be advised by the examining immigration officer that he may appeal to a board of medical officers of the United States Public Health Service pursuant to section 234 of the Act. If such an appeal is taken, the district director shall arrange for the convening of the medical board.

[24 FR 6477, Aug. 12, 1959, as amended at 44 FR 4653, Jan. 23, 1979; 56 FR 50812, Oct. 9, 1991]

§ 235.7 Referral of certain cases to district director.

If the examining immigration officer has reason to believe that the cause of an alien's excludability can readily be removed by the posting of a bond in accordance with section 213 of the Act, or by the exercise of section 211, section 212(d) (3) or (4), or section 212(c) of the Act, or by granting permission to reapply for admission after deportation or removal, he may in lieu of detaining the alien for hearing in accordance with section 235(b) and section 236 of the Act refer the alien's case to the district director within whose district the port is located for consideration of such action and defer further examination pending the district director's decision. Refusal of a district director to authorize admission under section 213, or to grant an application for the benefits of section 211, section 212(d) (3) or (4), or section 212(c), or to grant permission to reapply for admission after

deportation or removal shall be without prejudice to the renewal of such application or the authorizing of such admission by the special inquiry officer without additional fee.

[28 FR 4251, Apr. 30, 1963]

§ 235.8 Temporary exclusion.

(a) *Report.* Any immigration officer who temporarily excludes any alien under section 235(c) of the Act shall report the action promptly to the district director who has administrative jurisdiction over the port at which the alien arrived. The immigration officer shall, if possible, take a brief sworn question-and-answer statement from the alien, and the alien shall be notified by personal service of Form I–147 of the action taken and the right to make written representations. If the subject of the report is an alien who seeks to enter the United States other than under section 101(a)(15)(D) of the Act, the district director shall forward the report to the regional commissioner for further action as provided in paragraph (b) of this section.

(b) *Action by regional commissioner.* If the regional commissioner is satisfied that the alien is inadmissible to the United States under paragraph (27), (28), or (29) of section 212(a) of the Act and if the regional commissioner, in the exercise of his discretion, concludes that such inadmissibility is based on information of a confidential nature the disclosure of which would be prejudicial to the public interest, safety, or security, he may deny any hearing or further hearing by a special inquiry officer and order such alien excluded and deported, or enter such other order in the case as he deems appropriate. In any other case the regional commissioner may direct that an immigration officer shall further examine the alien as to his admissibility or that the alien be given a hearing or further hearing before a special inquiry officer.

(c) *Finality of decision.* The decision of the regional commissioner provided for in paragraph (b) of this section shall be final and no appeal may be taken therefrom. The decision of the regional commissioner shall be in writing, signed by him and, unless it contains confidential matter, a copy shall be served on the alien. If the decision contains confidential matter, a separate order showing only the ultimate disposition of the case shall be signed by the regional commissioner and served on the alien.

(d) *Hearing by immigration judge.* If the regional commissioner directs that an alien temporarily excluded be given a hearing or further hearing before an immigration judge, the hearing and all further proceedings in the matter shall be conducted in accordance with the provisions of section 236 and other applicable sections of the Act to the same extent as though the alien had been referred to an immigration judge by the examining immigration officer; except, that if confidential information, not previously considered in the matter, is adduced supporting the exclusion of the alien under paragraph (27), (28), or (29) of section 212(a) of the Act, the disclosure of which, in the discretion of the immigration judge, may be prejudicial to the public interest, safety, or security, the immigration judge may again temporarily exclude the alien under the authority of section 235(c) of the Act and further action shall be taken as provided in this section.

[22 FR 9791, Dec. 6, 1957; 22 FR 9519, Nov. 28, 1957, as amended at 48 FR 8, Jan. 3, 1983; 48 FR 30350, July 1, 1983]

§ 235.9 Conditional entries.

(a) *Inspection of conditional entrant and refugee parolee as to admissibility for permanent residence.* Each alien who has been admitted under section 203(a)(7) as a conditional entrant, or paroled under section 212(d)(5) of the Act as a refugee prior to September 30, 1980, and who is not otherwise eligible for retroactive adjustment of status to permanent resident, shall be required to appear before an immigration officer within one year following conditional entry or parole. If over 14 years of age, the conditional entrant or parolee shall be interrogated under oath by an immigration officer and a determination of admissibility shall be made under parts 235 and 236 of this chapter. Except as provided in parts 245 and 249 of this chapter, an application under this part shall be the sole method of requesting the exercise of discretion under section 212 (g), (h), or (i) of the Act, insofar as it relates to

the excludability of an alien in the United States. Any alien who is inspected and admitted under this part who is eligible for and wishes to apply for naturalization immediately shall be processed under §235.9(b)(3) of this chapter.

(b) *Request to ''roll back'' permanent residence date by permanent resident who was paroled into the United States as a refugee*—(1) *General.* A request by a permanent resident who was originally paroled into the United States as a refugee before September 30, 1980 to ''roll back'' the date of acquiring permanent residence to the date of original parole as a refugee shall be made in writing to the district director having jurisdiction over the applicant's place of residence. Each request must be accompanied by the Alien Registration Card, Form I–551, previously issued to the applicant, and completed forms G–325 and FD–258. Where an applicant is eligible for and wishes to apply immediately for naturalization, the request must contain a statement to that effect. The decision on the request shall be made by the district director. There is no appeal from the district director's decision.

(2) *Applicant for ''roll back'' who is not eligible for or who does not wish to file an application for naturalization immediately.* Where the recipient of a ''roll back'' would not be immediately eligible to apply for naturalization, or if eligible, does not wish to do so immediately, the ''roll back'' request must be accompanied by three identical color photographs taken within the past thirty days. The photographs must comply with the requirements for an ADIT card. These requirements may be obtained from any office of the Immigration and Naturalization Service. If the request is approved, the applicant shall be furnished a new Alien Registration Card bearing the new date lawful admission for permanent residence is recorded.

(3) *Where ''roll back'' would make applicant immediately eligible for naturalization and applicant intends to file the application immediately.* Where a ''roll back'' of the date of permanent residence under this regulation would make the applicant immediately eligible for naturalization, and the applicant indicates a desire to file an application for naturalization immediately, the district director shall receive the ''roll back'' application and process it. If the ''roll back'' application is granted, the new date lawful admission for permanent residence is recorded shall be entered on Form I–181 and placed in the applicant's file. The applicant shall then be furnished the appropriate forms and instructions for filing the application for naturalization. A new Alien Registration Card need not be issued under these circumstances. Where a new Alien Registration Card is not issued, Form I–181 will be so noted.

(c) *Termination of conditional entrant or refugee parole status.* Whenever a district director has reason to believe that a conditional entrant under section 203(a)(7) of the Act or an alien paroled or a refugee under section 212(d)(5) of the Act before September 30, 1980, whose status has not otherwise been terminated or changed, it or has become inadmissible to the United States under any provision (except paragraph (20)) of section 212(a) of the Act, the district director shall, in the case of a parolee, comply with §212.5(d) of this chapter, and thereafter serve on either class of alien, Notice to Alien Detained for Hearing Before Immigration Judge, Form I–122, in accordance with §235.6 of this part. The alien shall be referred for a hearing before an immigration judge under sections 235, 236, and 237 of the Act and parts 235, 236, and 237 of this chapter. If the immigration judge determines that the alien is not inadmissible to the United States or, if inadmissible, that the alien is prima facie eligible for a waiver on the grounds of excludability under section 212 (g), (h), or (i) of the Act, the judge shall order the proceedings terminated and refer the matter to the district director for further proceedings under section 203(g) of the Act. The order shall be without prejudice to renewing proceedings or instituting new proceedings under this section. There is no appeal from a decision by a district director denying an application for a waiver under section 212 (g), (h), or (i) of the Act, but the denial is without prejudice to the renewal of the application in proceedings before an immigration

judge. If the immigration judge determines that the alien is inadmissible to the United States for permanent residence under any provision of the Act, except section 212(a)(20), and that the alien is not entitled to the benefits of section 212 (g), (h), or (i) of the Act, the judge shall order the termination of the alien's conditional entry and make such further order as may be proper. The decision of the immigration judge may be appealed under §236.7 of this chapter.

[48 FR 8, Jan. 3, 1983, as amended at 58 FR 48778, Sept. 20, 1993]

§235.10 U.S. Citizen Identification Card.

(a) *General.* The U.S. Citizen Identification Card, Form I–197, is no longer issued by the Service but valid existing cards will continue to be acceptable documentation of U.S. citizenship. Possession of the identification card is not mandatory for any purpose. A U.S. Citizen Identification Card remains the property of the United States. Because the identification card is no longer issued, there are no provisions for replacement cards.

(b) *Surrender and voidance*—(1) *Institution of proceeding under section 236, 242 or 342 of the Act.* A U.S. citizen identification card must be surrendered provisionally to a Service office upon notification by the district director that a proceeding under section 236, 242 or 342 of the Act is being instituted against the person to whom the card was issued. The card shall be returned to the person if the final order in the proceeding does not result in voiding the card under this paragraph. A U.S. Citizen Identification Card is automatically void if the person to whom it was issued is determined to be an alien in a proceeding conducted under section 236 or 242 of the Act, or if a certificate, document, or record relating to that person is cancelled under section 342 of the Act.

(2) *Investigation of validity of identification card.* A U.S. Citizen Identification Card must be surrendered provisionally upon notification by a district director that the validity of the card is being investigated. The card shall be returned to the person who surrendered it if the investigation does not result in a determination adverse to his or her claim to be a United States citizen. When an investigation results in a tentative determination adverse to the applicant's claim to be a United States citizen, the applicant shall be notified by certified mail directed to his or her last known address. The notification shall inform the applicant of the basis for the determination and of the intention of the district director to declare the card void unless within 30 days the applicant objects and demands an opportunity to see and rebut the adverse evidence. Any rebuttal, explanation, or evidence presented by the applicant must be included in the record of proceeding. The determination whether the applicant is a United States citizen must be based on the entire record and the applicant shall be notified of the determination. If it is determined that the applicant is not a U.S. citizen, the applicant shall be notified of the reasons, and the card deemed void. There is no appeal from the district director's decision.

(3) *Admission of alienage.* A U.S. Citizen Identification Card is void if the person to whom it was issued admits in a statement signed before an immigration officer that he or she is an alien and consents to the voidance of the card. Upon signing the statement the card must be surrendered to the immigration officer.

(4) *Surrender of void card.* A void U.S. Citizen Identification Card which has not been returned to the Service must be surrendered without delay to an immigration officer or to the issuing office of the Service.

(c) *U.S. Citizen Identification Card previously issued on Form I–179.* A valid U.S. Citizen Identification Card issued on Form I–179 continues to be valid subject to the provisions of this section.

[48 FR 9504, Mar. 7, 1983]

§235.11 Admission of conditional permanent residents.

(a) *General*—(1) *Conditional residence based on family relationship.* An alien seeking admission to the United States with an immigrant visa as the spouse or son or daughter of a United States citizen or lawful permanent resident

shall be examined to determine whether the conditions of section 216 of the Act apply.

If so, the alien shall be admitted conditionally for a period of two years. At the time of admission, the alien shall be notified that the alien and his or her petitioning spouse must file a Petition to Remove the Conditions on Residence (Form I–751) within the 90-day period immediately preceding the second anniversary of the alien's admission for permanent residence.

(2) *Conditional residence based on entrepreneurship.* An alien seeking admission to the United States with an immigrant visa as an alien entrepreneur (as defined in section 216A(f)(1) of the Act) or the spouse or unmarried minor child of an alien entrepreneur shall be admitted conditionally for a period of two years. At the time of admission, the alien shall be notified that the principal alien (entrepreneur) must file a Petition by Entrepreneur to Remove Conditions (Form I–829) within the 90-day period immediately preceding the second anniversary of the alien's admission for permanent residence.

(b) *Correction of endorsement on immigrant visa.* If the alien is subject to the provisions of section 216 of the Act, but the classification endorsed on the immigrant visa does not so indicate, the endorsement shall be corrected and the alien admitted as a lawful permanent resident on a conditional basis if otherwise admissible. Conversely, if the alien is not subject to the provisions of section 216, but the visa classification endorsed on the immigrant visa indicates that the alien is subject thereto (e.g., if the second anniversary of the marriage upon which the immigrant visa is based occurred after the issuance of the visa and prior to the alien's application for admission) the endorsement on the visa shall be corrected and the alien admitted as a lawful permanent resident without conditions, if otherwise admissible.

(c) *Expired conditional permanent resident status.* The lawful permanent resident alien status of a conditional resident automatically terminates if the conditional basis of such status is not removed by the Service through approval of a Petition to Remove the Conditions on Residence (Form I–751) or, in the case of an alien entrepreneur (as defined in section 216A(f)(1) of the Act), a Petition by Entrepreneur to Remove Conditions (Form I–829). Therefore, an alien who is seeking admission as a returning resident subsequent to the second anniversary of the date on which conditional residence was obtained (except as provided in §211.1(b)(1) of this chapter) and whose conditional basis of such residence has not been removed pursuant to section 216(c) or 216A(c) of the Act, whichever is applicable, shall be placed under exclusion proceedings. However, in a case where conditional residence was based on a marriage, exclusion proceedings may be terminated and the alien may be admitted as a returning resident if the required petition (Form I–751) is filed jointly, or by the alien alone (if appropriate), and approved by the Service. In the case of an alien entrepreneur, exclusion proceedings may be terminated and the alien admitted as a returning resident if the required petition (Form I–829) is filed by the alien entrepreneur and approved by the Service.

[53 FR 30021, Aug. 10, 1988, as amended at 59 FR 26592, May 23, 1994]

§ 235.12 Northern Mariana identification card.

(a) *General.* A Northern Mariana identification card to identify the holder as a United States citizen, may be issued to the following persons and their children under 18 years of age, who were born on or before November 3, 1986, and were not citizens or nationals of the United States, and did not owe allegiance to any foreign state on that date:

(1) A person in the Northern Mariana Islands (NMI), and as of November 2, 1986, was a citizen of the Trust Territory of the Pacific Islands and was domiciled as of that date in the Commonwealth of the Northern Mariana Islands (CNMI) or the United States, or any territory or possession of the United States; or

(2) A citizen of the Trust Territory of the Pacific Islands on November 2, 1986, who had been domiciled continuously in the NMI for the preceeding five years and who, unless under age, registered to vote in elections for the NMI

District legislature or for any municipal election in the NMI prior to January 1, 1975; or

(3) A person domiciled in the NMI on November 2, 1986, who although not a citizen of the Trust Territory of the Pacific Islands on that date, had been continuously domiciled in the NMI beginning prior to January 1, 1974.

(b) *Application.* The Form I–777, Application for Issuance or Replacement of Northern Mariana Card shall be submitted to the Service office in the United States which has jurisdiction over the applicant's residence. The initial card application Form I–89 shall be completed and forwarded to the Immigration Card Facility with the word ''MARIANA'' block printed or stamped in the upper right-hand corner (side 1). A replacement card application shall be made on Form I–777 for a lost, mutilated, or destroyed card.

(c) *Duration of application period.* The Northern Mariana identification card will be issued during a two year period to end on July 1, 1990. All cards issued are valid indefinitely subject to the provisions of this section. Replacement cards shall continue to be issued upon application on Form I–777.

[53 FR 23380, June 22, 1988]

§235.13 Automated inspection services.

(a) *PORTPASS Program*—(1) *Definitions*—(i) *Port Passenger Accelerated Service System (PORTPASS).* A system in which certain ports-of-entry (POEs) are identified and designated by the Service as providing access to the United States for a group of identified, low-risk, border crossers. Alien participants in the PORTPASS program are personally inspected, identified, and screened in advance of approval for participation in the program by an immigration officer, and may apply to enter the United States through a dedicated commuter lane (DCL) or through an automated permit port (APP). Such advance inspection and identification, when the enrolled participant satisfies the conditions and requirements set fourth in this section, satisfies the reporting requirements of §235.1(a). Each successful use of PORTPASS constitutes a separate and completed inspection and application for entry by the alien program participants on the date PORTPASS is used. United States citizens who meet the eligibility requirements for participation are subject to all rules, procedures, and conditions for use set forth in this section.

(ii) *Automated Permit Port (APP).* A POE designated by the Service to provide access to the United States by an identified, low-risk, border crosser through the use of automation when the POE is not staffed. An APP has limited hours of operation and is located at a remote location on a land border. This program is limited to the northern border of the United States.

(iii) *Dedicated Commuter Lane (DCL).* A special lane set apart from the normal flow of traffic at a land border POE which allows an accelerated inspection for identified, low-risk travelers. This program is limited to the northern border of the United States and the California-Mexico border.

(iv) *DCL system costs fee.* A fee charged to a participant to cover the cost of the implementation and operation of the PORTPASS system. If a participant wishes to enroll more than one vehicle for use in the PORTPASS system, he or she will be assessed an *additional vehicle fee* for each additional vehicle enrolled. Regardless of when the additional vehicle is enrolled, the expiration date for use of that vehicle in the DCL will be the same date that the respective participant's authorized use of the lane expires, or is otherwise revoked.

(2) *Designation of POEs for PORTPASS access.* The following criteria shall be used by the Service in the selection of a POE when classifying the POE as having PORTPASS access:

(i) The location has an identifiable group of low-risk border crossers;

(ii) The institution of PORTPASS access will not significantly inhibit normal traffic flow;

(iii) The POE selected for access via a DCL has a sufficient number of Service personnel to perform primary and secondary inspection functions.

(3) *General eligibility requirements for PORTPASS program applicants.* Applicants to PORTPASS must be citizens or lawful permanent residents of the

United States, or nonimmigrants determined to be eligible by the Commissioner of the Service. Non-United States citizens must meet all applicable documentary and entry eligibility requirements of the Act. Applicants must agree to furnish all information requested on the application, and must agree to terms set forth for use of the PORTPASS program. Use of the PORTPASS program constitutes application for entry into the United States. Criminal justice information databases will be checked to assist in determining the applicant's eligibility for the PORTPASS program at the time the Form I–823, Application—Alternative Inspection Services, is submitted. Criminal justice information on PORTPASS participants will be updated regularly, and the results will be checked electronically at the time of each approved participant's use of PORTPASS. Notwithstanding the provisions of 8 CFR part 264, fingerprints on Form FD–258 or in the manner prescribed by the Service may be required.

(4) *Application.* (i) Application for PORTPASS access shall be made on Form I–823, Application—Alternative Inspection Services. Applications may be submitted during regular working hours at the principal Port-of-Entry having jurisdiction over the Port-of-Entry for which the applicant requests access. Applications may also be submitted by mail.

(ii) Each person seeking PORTPASS access must file a separate application.

(iii) The number of persons and vehicles which can use a DCL is limited numerically by the technology of the system. For this reason, distribution of applications at each POE may be limited.

(iv) Applications must be supported by evidence of citizenship, and, in the case of lawful permanent residents of the United States, evidence of lawful permanent resident status in the United States. Alien applicants required to possess a valid visa must present documentation establishing such possession and any other documentation as required by the Act at the time of the application, and must be in possession of such documentation at the time of each entry, and at all times while present in the United States. Evidence of residency must be submitted by all applicants. Evidence of employment may be required to be furnished by the applicant. A current valid driver's license, and evidence of vehicle registration and insurance for the vehicle which will be occupied by the applicant as a driver or passenger when he or she uses the DCL or APP must be presented to the Service prior to approval of the application.

(v) A completed Form I–823 must be accompanied by the fee as prescribed in §103.7(b)(1) of this chapter. Each PORTPASS applicant 14 years-of-age or older must complete the application and pay the application fee. Applicants under the age of 14 will be required to complete the application, but will not be required to pay the application fee. An application for a replacement PORTPASS card must be made on the Form I–823, and filed with the fee prescribed in §103.7(b)(1). The district director having jurisdiction over the POE where the applicant requests access may, in his or her discretion, waive the application or replacement fee.

(vi) If fingerprints are required to assist in a determination of eligibility at that POE, the applicant will be so advised by the Service prior to submitting his or her application. The applicant shall also be informed at that time of the current Federal Bureau of Investigation fee for conducting a fingerprint check. This fee must be paid by the applicant to the Service before any processing of the application shall occur. The fingerprint fee may be not be waived.

(vii) Each applicant must present himself or herself for an inspection and/or positive identification at a time designated by the Service prior to approval of the application.

(viii) Each vehicle that a PORTPASS participant desires to register in PORTPASS must be inspected and approved by the Service prior to use in the PORTPASS system. Evidence of valid, current registration and vehicle insurance must be presented to the Service at the time the vehicle is inspected. If the vehicle is not owned by the participant, the participant may be required to present written permission from the registered owner authorizing

use of the vehicle in the PORTPASS program throughout the PORTPASS registration period.

(ix) An applicant, whether an occupant or driver, may apply to use more than one vehicle in the DCL. The first vehicle listed on the Form I–823 will be designated as the applicant's primary vehicle. The second vehicle, if not designated by another applicant as his or her primary vehicle, is subject to the additional vehicle charge as prescribed by the Service.

(x) An application may be denied in the discretion of the district director having jurisdiction over the POE where the applicant requests access. Notice of such denial shall be given to the applicant. There is no appeal from the denial, but denial is without prejudice to reapplying for this or any other Service benefit. Re-applications, or applications following revocation of permission to use the lane, will not be considered by the Service until 90 days have passed following the date of denial or revocation. Criteria which will be considered in the decision to approve or deny the application include the following: admissibility to the United States and documentation so evidencing, criminal history and/or evidence of criminality, purpose of travel, employment, residency, prior immigration history, possession of current driver's license, vehicle insurance and registration, and vehicle inspection.

(xi) Applications approved by the Service will entitle the applicant to seek entry via a designated PORTPASS Program POE for a period of 1 year from the date of approval of the application unless approval is otherwise withdrawn. An application for a replacement card will not extend the initial period of approval.

(5) By applying for and participating in the PORTPASS program, each approved participant acknowledges and agrees to all of the following:

(i) The installation and/or use of, in the vehicle approved for use in the PORTPASS program, any and all decals, devices, technology or other methodology deemed necessary by the Service to ensure inspection of the person(s) seeking entry through a DCL, in addition to any fee and/or monetary deposit assessed by the Service pending return of any and all such decals, devices, technology, and other methodology in undamaged condition.

(ii) That all devices, decals, or other equipment, methodology, or technology used to identify or inspect persons or vehicles seeking entry via any PORTPASS program remains the property of the United States Government at all times, and must be surrendered upon request by the Service. Each participant agrees to abide by the terms set forth by the Service for use of any device, decal, or other equipment, method or technology.

(iii) The payment of a system costs fee as determined by the Service to be necessary to cover the costs of implementing, maintaining, and operating the PORTPASS program.

(iv) That each occupant of a vehicle applying for entry through PORTPASS must have current approval from the Service to apply for entry through the PORTPASS program in that vehicle.

(v) That a participant must be in possession of any authorization document(s) issued for PORTPASS access and any other entry document(s) as required by the Act or by regulation at the time of each entry to the United States.

(vi) That a participant must positively identify himself or herself in the manner prescribed by the Service at the time of each application for entry via the PORTPASS.

(vii) That each use of PORTPASS constitutes a separate application for entry to the United States by the alien participant.

(viii) That each participant agrees to be responsible for all contents of the vehicle that he or she occupies when using PORTPASS.

(ix) That a participant may not import merchandise or transport controlled or restricted items using PORTPASS. The entry of any merchandise or goods must be in accordance with the laws and regulations of all other Federal inspection agencies.

(x) That a participant must abide by all Federal, state and local laws regarding the importation of alcohol or agricultural products or the importation or possession of controlled substances as defined in section 101 of the

Controlled Substance Act (21 U.S.C. § 802).

(xi) That a participant will be subject to random checks or inspections that may be conducted by the Service at any time and at any location, to ensure compliance.

(xii) That current vehicle registration and, if applicable, current permission to use the vehicle in PORTPASS, and evidence of current vehicle insurance, shall be in the vehicle at all times during use of PORTPASS.

(xiii) Participant agrees to notify the Service if a vehicle approved for use in a PORTPASS program is sold, stolen, damaged, or disposed of otherwise. If a vehicle is sold, it is the responsibility of the participant to remove or obliterate any identifying device or other authorization for participation in the program or at the time of sale unless otherwise notified by the Service. If any license plates are replaced on an enrolled vehicle, the participant must submit a properly executed Form I–823, without fee, prior to use of the vehicle in the PORTPASS program.

(xiv) That APP-approved participants who wish to enter the United States through a POE other than one designated as an APP through which they may pass must present themselves for inspection or examination by an immigration officer during normal business hours. Entry to the United States during hours when a Port of Entry is not staffed may be made only through a POE designated as an APP.

(b) *Violation of condition of the PORTPASS program.* A PORTPASS program participant who violates any condition of the PORTPASS program, or who has violated any immigration law or regulation, or a law or regulation of the United States Customs Service or other Federal Inspection Service, or who is otherwise determined by an immigration officer to be inadmissible to the United States or ineligible to participate in PORTPASS, may have the PORTPASS access revoked at the discretion of the district director or the chief patrol agent and may be subject to other applicable sanctions, such as criminal and/or administrative prosecution or deportation, as well as possible seizure of goods and/or vehicles.

(c) *Judicial review.* Nothing in this section is intended to create any right or benefit, substantive or procedural, enforceable in law or equity by a party against the Department of Justice, the Immigration and Naturalization Service, their officers or any employees of the Department of Justice.

[61 FR 53831, Oct. 16, 1996]

PART 236—EXCLUSION OF ALIENS

Sec.

AUTHORITY: 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1362.

§ 236.1 Authority of immigration judges.

In determining cases referred for further inquiry as provided in section 235 of the Act, immigration judges shall have the powers and authority conferred upon them by the Act and this chapter. Subject to any specific limitation prescribed by the Act and this chapter, immigration judges shall also exercise the discretion and authority conferred upon the Attorney General by the Act as is appropriate and necessary for the disposition of such cases.

[42 FR 46045, Sept. 14, 1977]

§ 236.2 Hearing.

(a) *Opening.* Exclusion hearings shall be closed to the public, unless the alien at his own instance requests that the public, including the press, be permitted to attend; in that event, the hearing shall be open, provided that the alien states for the record that he is waiving the requirement in section 236 of the Act that the inquiry shall be